Supreme Court, U.S.
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No. 99-585

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1999

RONALD BRANSON,
Petitioner,

vs.

CITY OF LOS ANGELES, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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LIST OF PARTIES

Appellant:	Ronald Branson
Appellees:	City of Los Angeles, Los Angeles Department of Transportation (LADOT); Thomas Conner, General Manager LADOT; Lockheed Martin IMS; Edward Avila, Western Region Senior Vice President of Lockheed Martin IMS; California Department of Motor Vehicles (DMV); Sally Reid, Director DMV
Cross-Appellants:	Lockheed Martin IMS and Edward Avila
Cross-Appellee:	Ronald Branson

LIST OF PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES

Lockheed Martin IMS is a New York corporation that is a wholly owned subsidiary of its parent company, Lockheed Martin Corporation. Lockheed Martin IMS has no subsidiaries. There is no other parent or subsidiary company to be listed.

TABLE OF CONTENTS

	Page
LIST OF PARTIES	i
LIST OF PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES	ii
TABLE OF CITED AUTHORITIES	iv
STATEMENT OF CASE	1
NO COMPELLING REASON FOR COURT TO EXERCISE DISCRETIONARY REVIEW POWERS	4
CONCLUSION	8

TABLE OF CITED AUTHORITIES

Page

Federal Cases

Allen v. McCurry, 449 U.S. 90, 66 L.Ed.2d 308, 101 S.Ct. 441 (1980) 6

Branson v. Nott, 62 F.3d 287 (9th Cir. 1995) .....

Cantrell v. Knoxville Community Development Corp., 60 F.3d 1177 (6th Cir. 1995) 5

Dist. Col. Court of Appeals v. Feldman, 460 U.S. 462, 75 L.Ed.2d 206, 103 S.Ct. 1303 (1983) 6

Roadway Express Inc. v. Piper, 447 U.S. 752, 65 L.Ed.2d 488, 100 S.Ct. 2455 (1980) 7

White v. General Motors Corp., Inc., 908 F.2d 265 (10th Cir. 1990)..... 7

United States Statutes

28 USC § 1919..... 7

42 USC § 1983..... 6

42 USC § 1988..... 4

Federal Rules

Federal Rules of Civil Procedure, Rule 15(a) 6

Federal Rules of Civil Procedure, Rule 59(e) 6

Federal Rules of Evidence, Rule 201(b) 5

Federal Rules of Evidence, Rule 201(d) 5

TABLE OF CITED AUTHORITIES

Page

California Statutes

California Code of Civil Procedure § 906 5
California Vehicle Code § 4760 2
California Vehicle Code §§ 40200 through 40230 ...
California Vehicle Code § 40206 .....

State Court Rules

California Rules of Court, Rule 2(a) .....

Miscellaneous

Moore's Federal Practice 3d § 15.12[2] (1997) 6
Moore's Federal Practice 3d § 15.12[3] (1997) 6
Moore's Federal Practice 3d § 15.15[3] (1997) 6
21 Wright & Graham, *Federal Practice and Procedure:* Evidence § 5110 (1977) 5
21 Wright & Graham, *Federal Practice and Procedure:* Evidence § 5110 (1999 Supplement) .. 5

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Respondents Lockheed Martin IMS and Edward Avila ("Avila") respectfully request that Ronald Branson's ("Branson") petition for a writ of certiorari, SEEKING REVIEW OF THE NINTH CIRCUIT'S opinion in this case, be denied. The Ninth Circuit's opinion is unpublished.

STATEMENT OF CASE

On January 12, 1998 this court denied Branson's petition for a writ of certiorari regarding the state court lawsuit he filed over a parking ticket he received in December of 1993.[1] Branson's current petition complains about the federal court

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[1] See *Ronald Branson v. City of Los Angeles, et al.*, Case number 97-6658.

proceedings he started three weeks after this Court's previous ruling.

As the Court will recall, the City of Los Angeles mailed Branson a Notice of Delinquent Parking Violation (the "Notice"), which stated, in pertinent part, as follows:

> Our records show that you have failed to respond to the parking ticket(s) listed below. Failure to pay the parking penalties due by mail or in person *prior* to the DUE DATE indicated below [01/05/94] will result in increased penalties, *withholding of your vehicle registration by the Department of Motor Vehicles* (CVC [California Vehicle Code Section] 4760), and may subject your vehicle to immobilization (booting) or impoundment . . . If you wish to contest this violation, you must request an administrative review PRIOR to the DUE DATE [01/05/94] printed on this NOTICE. This may be done by mail, by telephone to the numbers noted above, or in person at the offices listed on the back of this notice. (emphasis added)

The Notice: (1) informed Branson of his failure to pay a parking ticket; (2) warned him that a failure to pay would result in increased penalties; (3) warned him that a failure to pay would result in the withholding of the registration of his vehicle; and (4) informed him of the procedures available for contesting the parking ticket. The Notice was sent in accordance with state law.

Branson did not follow the procedures identified in the Notice. Instead, he invented his own. On January 4, 1994, he mailed the City a document styled "Response to 'Notice of Delinquent Parking Violation' Mailed To The Accused December 22, 1993 (Affidavit of Ronald Branson)", in which he admitted receiving the Notice.

Four days later, the City responded by letter stating:

> If you believe sufficient justification exist [sic] to grant an exemption from the time limits, you may request a 'Waiver for Untimely Request for Administrative Review/Hearing' by filling out the enclosed form and mailing it, with a copy of this letter . . .

Instead of obtaining the "Waiver for Untimely Request", Branson mailed the City a document he called "Notice Of Non-Response to 'Response to "Notice of Delinquent Parking Violation" Mailed To The Accused December 22, 1993 (Affidavit of Ronald Branson).' " On January 26, 1994, the City mailed Branson a letter in reply. Branson did nothing in response until May 17, 1994, when he filed a "Claim For Damages" against the City.

On September 12, 1994, the California Department of Motor Vehicles ("DMV") mailed Branson a Renewal Notice for Vehicle Registration. Although the Renewal Notice required a payment of $158.00, which included the fine for the unpaid parking ticket, Branson sent the DMV a check for only $39.00. The DMV cashed the check and sent Branson a notice requesting payment of the $119.00 balance. Pursuant to its statutory power, the DMV also withheld the vehicle registration.

Branson then filed his state court lawsuit, which prayed for (1) general damages in the amount of $350,000.00; (2) an order expunging the parking ticket; and (3) an order requiring the DMV to renew his vehicle registration.

The state trial court sustained the City's and Lockheed IMS's demurrer to the complaint and entered an Order of Dismissal.

Under California law, if a notice of appeal is not filed within 180 days of the entry of the order of dismissal, the state appellate court lacks jurisdiction to consider the appeal. Since Branson did not timely file his notice of appeal,

the state court of appeal had no jurisdiction to consider; and, therefore, properly dismissed, the appeal.

He thereafter filed a petition for review with the California Supreme Court, which was denied on February 5, 1997. His second petition for review was also denied and, as mentioned above, his petition to this Court for a writ of certiorari was denied on January 12, 1998.

Three weeks later, Branson filed the current lawsuit, which named Lockheed Martin IMS and Avila as defendants. They moved to dismiss; their motion was granted; and judgment was entered against Branson. He then filed a post-judgment motion to alter or amend the judgment and filed a first amended complaint. Lockheed Martin IMS and Avila opposed the motion; filed a Bill of Costs; and filed a motion for 42 USC § 1988 ("§ 1988") attorney's fees.

After ruling on the post-judgment motions, the district court awarded costs. Branson filed a notice of appeal. Lockheed Martin IMS and Avila cross-appealed because the district court denied their request for § 1988 attorney's fees.

The court of appeals affirmed the district court's judgment. After his request for a rehearing was denied, Branson filed his current petition with this Court.

NO COMPELLING REASON FOR COURT TO EXERCISE DISCRETIONARY REVIEW POWERS

Branson's petition makes no showing that the decision of the court of appeals (1) conflicts with a decision of another United States court of appeals on an important matter; (2) has so far departed from the accepted and usual course of judicial proceedings; or (3) sanctioned such a departure by a lower court. Moreover, the petition makes no showing that a state court of last resort has decided an important federal

question in a way that conflicts with a decision of this Court, another state court, or of a United States court of appeals.

We anticipate that Branson may argue in his reply as follows: (1) the petition raises the question of whether Rule 201(d) of the Federal Rules of Evidence ("FRE") requires mandatory judicial notice on appeal; (2) it has been said that "earlier codifiers were all over the road" on the question (see 21 Wright & Graham, *Federal Practice and Procedure:* Evidence section 5110, page 525 (1977)); (3) this Court has not addressed the question; and (4) "[i]t is possible to read the Rule as answering the question affirmatively." See Wright & Graham, *supra.* Although respected authority has said that the better interpretation of Rule 201(d) limits mandatory judicial notice to the trial courts. [21 Wright & Graham, *supra.*, § 5110 at pp. 525–527; 21 Wright & Graham *Federal Practice & Procedure:* Evidence § 5110, p. 268 (1999 Supplement)], in truth, our research suggests that this Court has not addressed the question.

It is settled, however, that a court can take judicial notice of a fact if the fact is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." FRE Rule 201(b). Indeed, it is generally recognized that where the source of the information is questionable, judicial notice cannot be taken. See, e.g., *Cantrell v. Knoxville Community Development. Corp.*, 60 F.3d 1177, 1180 (6th Cir. 1995). Here, the source of the information was Branson's personal views, which are, to the say the least, questionable; for example, that an order was "interlocutory" not "final" [see Petition A-50, para. nos. (3) and (4)]; that "*(n)o appeal* on the subject matter of the notice of appeal (Exhibit C) under (California) Code of Civil Procedure section 906 (Exhibit D) was ever afforded (Branson) in state court . . ." [see Petition, A-52, para. no. (15)]; that "*(n)o adjudication* of (Branson's) constitutional challenge . . . was made by state court . . ." [see Peti-

tion, A-53, para. no. (16)]; and "*(n)o access* to state court for redress of (Branson's) grievances . . . was given by state court . . ." Petition, A-53, para. no. (17).

In sum, mandatory judicial notice was not required in the court of appeals in this case. Moreover, the court of appeals did not abuse its discretion in denying Branson's request for judicial notice.

As to the four other questions Branson presents in his petition, none provides a compelling reason for granting a writ of certiorari. First, as an overarching criticism of the remaining questions, we refer to what this Court plainly stated in *Allen v. McCurry*[2]:

> But the Court's view of Section 1983 . . . lends no strength to any argument that Congress intended to allow relitigation of federal issues decided after a full and fair hearing in a state court simply because the state court's decision may have been erroneous.[3]

Second, although he complains that he had a right to amend, Branson's ability to do so became subject to procedural limitations once the district court entered a final judgment. Indeed, it is well settled that a plaintiff no longer has the right to amend under Rule 15(a) of the Federal Rules of Civil Procedure and must first obtain relief under Rule 59(e).[4] Moreover, it is settled that the futility of amendment can, by itself, justify the denial of a motion under Rule 59(e).[5]

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[2]449 U.S. 90, 66 L.Ed.2d 308, 101 S.Ct. 441 (1980). See, also, *Dist. Col. Court of Appeals v. Feldman*, 460 U.S. 462, 482, 75 L.Ed.2d. 206, 222, 103 S.Ct. 1303, 1314 (1983).

[3]Id., 449 U.S. at 101.

[4]*Moore's Federal Practice 3d.*, § 15.12[2] (1997).

[5]*Moore's Federal Practice 3d.*, § 15.12[3] and § 15.15[3] (1997).

Third, since the district court entered a final judgment in favor of Lockheed Martin IMS and Avila, costs were properly allowed to them.[6]

Fourth, it is settled that the district court had discretion and inherent power to *sua sponte* discipline Branson for willful abuse of the judicial process.[7] Moreover, there is no dispute that the district court's order gave Branson notice of the rule on which the sanctions were based, and the form of the sanctions.[8] Indeed, the monetary sanctions were not due for over forty days, which provided Branson with an adequate opportunity to fully brief the issue by asking the court to reconsider. It is also settled that an opportunity to be heard with regard to sanctions does not require an oral or evidentiary hearing on the issue.[9] In short, Branson received all the process he was due.

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[6]See, e.g., 28 USC § 1919.

[7]*Roadway Express Inc. v. Piper*, 447 U.S. 752, 766, 65 L.Ed.2d 488, 501, 100 S.Ct. 2455 (1980).

[8]*Id.*, 447 U.S. at 767.

[9]See, e.g., *White v. General Motors Corp., Inc.*, 908 F.2d 675, 686 (10th Cir. 1990) *cert. denied* 498 U.S. 1069, 112 L.Ed.2d 850, 111 S.Ct. 788 (1991).

CONCLUSION

For these reasons, and each of them, Branson's petition for a writ of certiorari should be denied.

Dated: October 27, 1999

Respectfully submitted,

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